

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 26 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0085
	)	DEPARTMENT B
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
JOHN ORVIL MARTIN,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20084697

Honorable Charles S. Sabalos, Judge  
Honorable Richard S. Fields, Judge

AFFIRMED AS MODIFIED

John William Lovell

Tucson  
Attorney for Appellant

ESPINOSA, Judge.

¶1 Following a three-day jury trial, John Martin was convicted of possession of a narcotic drug (cocaine base) for sale, possession of drug paraphernalia, and two counts of possession of a deadly weapon during the commission of a felony drug offense. The trial court sentenced him to enhanced, concurrent prison terms, the longest of which was nine years. Counsel has filed a brief in compliance with *Anders v. California*, 386

U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), in which he avows he has reviewed the record but has found no arguable issue to raise and requests that we search the record for fundamental error. Martin has not filed a supplemental brief.

¶2 Viewing the evidence in the light most favorable to sustaining the verdict, we find there was sufficient evidence to support the jury’s finding of guilt. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). Pursuant to a warrant, police officers searched Martin’s home, finding 3.43 grams of cocaine base—an amount consistent with possession for sale, two handguns in a box with a receipt bearing Martin’s name, and various items related to the sale of cocaine base, including a razor blade, a scale, and surveillance equipment. *See* A.R.S. §§ 13-3408(A)(2), (D); 13-3401(5), (20)(z), (36)(c); 13-3102(A)(8); 13-3415(A).<sup>1</sup> And there was sufficient evidence to support the trial court’s finding that Martin has a historical prior felony conviction. A.R.S. § 13-604(W)(3).<sup>2</sup>

¶3 Martin’s sentences are within the prescribed statutory range and were imposed lawfully. §§ 13-604(A), (B), 13-3408(B)(2), (D); 13-3102(L); 13-3415(A). We note, however, that although the trial court imposed partially mitigated prison terms for Martin’s convictions, the sentencing minute entry describes those terms as “maximum,”

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<sup>1</sup>These statutes have not been changed in any way material to Martin’s offenses since he committed those offenses in November 2008.

<sup>2</sup>The Arizona criminal sentencing code has been amended and renumbered, *see* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120, effective “from and after December 31, 2008.” *Id.* § 120. We refer in this decision to the statutes as they were worded and numbered at the time of Martin’s offenses. *See* 2008 Ariz. Sess. Laws, ch. 24, § 1 (§ 13-604).

“aggravated,” and “presumptive.” A court’s oral pronouncement of sentence generally controls over the written minute entry in the event of a conflict. *See State v. Whitney*, 159 Ariz. 476, 487, 768 P.2d 638, 649 (1989). We therefore correct the sentencing minute entry to reflect that Martin was sentenced to partially mitigated prison terms for each of his offenses. *See State v. Hanson*, 138 Ariz. 296, 305, 674 P.2d 850, 859 (App. 1983) (appellate court may correct mistake in sentencing minute entry).

¶4 Martin’s convictions and sentences are affirmed as modified.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge